

and payment of a precept directed to him by Primrose, for payment of a part of the sum contained in the decret, bearing expressly to be in satisfaction of a part of the decret; which was found relevant, and admitted to Duie's probation; for proving whereof, Duie produced the precept, acceptance, and discharge.—It was *alleged*, That the writs produced proved not to the homologation of the decret as to the article controverted, being the freight of a vessel, which Duie offered to prove to have been decerned to have been within the third part of the just avail, and the precept bore payment of five dollars, decerned for the deterioration of the tackling, by virtue of a promise.

THE LORDS having considered the decret arbitral and precept, found it proved not the homologation as to the point in question, because the decret contained diverse heads. The precept bore to pay the deterioration of the tackling, and bore expressly, that the same was uncontraverse, and founded upon the defender's promise.

*Fol. Dic. v. I. p. 383. Stair, v. I. p. 144.*

1663. February 21. ANNA WARDLAW against FRAZER of Kilmundie.

ANDREW WARDLAW having a wadset upon some lands of the Lord Frazer, the debtor raises suspension of multiplepoinding against Anna, sister and heir to the said Andrew Wardlaw, and Frazer of Kilmundie, pretending right by a legacy from the defunct to the said sum.—The heir *alleged*, That it could be liable to no legacy, being heritable.—The defender *answered*, *imo*, The legacy was made *in procinctu belli*, where there was no occasion to get advice of the formal and secure way of disposing of the wadset, but the will of the defunct appearing *in eo casu*, it must be held as effectual as *testamentum militare in procinctu*, which needs no solemnities. *2dly*, The heir's husband hath homologated the legacy, by discounting a part thereof.—It was *answered*, That no testament whatever can reach heritable rights with us. *3dly*, That the homologation of the husband cannot prejudice his wife nor himself, *quoad reliquum* not discounted.

THE LORDS found the heirs had only right, except in so far as the husband had homologated the legacy, which they found to prefer the legatar to the whole benefit the husband could have thereby *jure mariti*, but not to prejudice the wife thereafter. See TESTAMENT.

*Fol. Dic. v. I. p. 382. Stair, v. I. p. 186.*

1682. January. ERSKINE against ERSKINE of Balgownie.

SIR JOHN ERSKINE of Balgownie having granted a bond of provision to his wife's children, whereby every one of them was provided to 2000 merks, and

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*quoad* one of many articles, not sufficient to homologate the whole.

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An heir having paid part of a legacy of an heritable bond, the whole legacy was sustained, though otherwise null.

No 87.

A person on death-bed executed a